UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:

RUDOLPH W. GIULIANI, Main Case No.

Debtor. 23-12055-shl

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

January 19, 2024

11:14 AM

B E F O R E:

HON. SEAN H. LANE

U.S. BANKRUPTCY JUDGE

ECRO: ANA VARGAS

Doc. #25 Debtor's Motion For An Order Modifying The Stay For The Limited Purpose Of Allowing The Debtor To File Post-Trial Motions To Modify The Judgment And For A New Trial And To File A Notice Of Appeal

Doc. #28 Order Scheduling Emergency Hearing On Debtors Application For Order Authorizing Modification Of The Stay For Purposes Of Post Judgment Motions And Appeals

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P R O C E E D I N G S

THE COURT: Good morning. Please be seated.

MR. FISCHOFF: Good morning.

THE COURT: We are here this morning -- oh, let me just turn on my microphone for the folks who are on Zoom.

Good morning. My name is Judge Sean Lane, and we're here in the United States Bankruptcy Court for the Southern District of New York for hearing in this Chapter 11 case of Rudolph W. Giuliani and more particularly, on the debtor's motion seeking to modify the automatic stay.

So we'll start, as we always do, by getting appearances. And we'll start with the folks here in the courtroom, and then we'll circle the virtual room of Zoom. So we'll start on this side of the room.

MR. FISCHOFF: Good morning, Your Honor. Berger, Fischoff, Shumer, Wexler & Goodman by Gary Fischoff on behalf of the debtor.

MR. BERGER: Good morning, Your Honor. Heath Berger, Berger, Fischoff, Shumer, Wexler & Goodman, attorney for the debtor.

THE COURT: All right. Good morning.

MS. STRICKLAND: Good morning, Your Honor. Rachel Strickland, Willkie Farr & Gallagher, on behalf of Ruby Freeman and Shaye Moss.

MR. BURBAGE: Good morning, Your Honor. James

Burbage, Willkie Farr & Gallagher.

MR. NATHAN: Aaron Nathan, Willkie Farr & Gallagher.

MR. QURESHI: Good morning, Your Honor. Abid Qureshi, Akin Gump Strauss Hauer & Feld. We are proposed counsel to the official committee of unsecured creditors. With me in the courtroom is my partner Ira Dizengoff, Amelia Danovich, and on the phone, my partner Phil Dublin.

THE COURT: All right. Good morning to you all.

MS. WELLS: Good morning, Your Honor. For the record, Annie Wells on behalf of the United States Trustee. And I believe I see my colleague Ms. Andrea Schwartz, and she will be taking the lead today.

THE COURT: All right. Good morning.

Anyone else here in the courtroom?

All right. We'll turn it over to appearances for Zoom. And we'll start with Ms. Schwartz, who I know is -- a helpful segue by Ms. Wells. So let me get that appearance.

MS. SCHWARTZ: Thank you. Good morning, Your Honor. Andrea Schwartz for the U.S. Trustee.

THE COURT: Good morning.

And on behalf of the official committee of unsecured creditors.

MR. DUBLIN: Good morning. Phil Dublin, Akin.

THE COURT: All right. Good morning.

As is often the circumstance with large cases of

interest, there are many, many pages of appearances. I don't go through them all, as that's not efficient. So at this point, I will throw it open to anyone else who has not yet made appearance who'd like to do so, with the understanding that for somebody who doesn't anticipate speaking and does, they can always identify themselves later on in the proceeding.

But anyone else who needs to make an appearance at this time?

MR. RATTET: Robert Rattet for Davidoff Hutcher & Citron and for Robert Costello.

THE COURT: All right. Good morning.

Anyone else?

MR. SAMUELS: Good morning, Your Honor. Joel Samuels of the Buchalter firm on behalf of Dominion.

THE COURT: Good morning.

Anyone else? All right.

MR. BROGAN: Good morning, Your Honor. Daniel Brogan, Benesch, Friedlander, on behalf of Smartmatic.

THE COURT: All right. Good morning.

Anyone else?

All right. As you all have no doubt surmised, today is a hybrid hearing. The court is back open. Today's not an evidentiary hearing, which we always do in person. We're back to the old days. Thank goodness. All of us. But we are fully hybrid.

The one thing I will say, there are different kinds of microphones here in the courtroom. These microphones that are the longneck ones are ones that amplify the sound in this room. But unbeknownst to any of you, without an explanation, these are the ones that pick up the sound for Zoom. So just make sure you're within hailing distance of those so that everybody who is on Zoom can hear you. And obviously, if anybody is having trouble hearing on Zoom, I can't promise a solution, but we can certainly do the best we can to address the problem.

And with that, we are here for the motion to lift stay. I have read the papers. I have read the oppositions. I think it's worth noting, this matter was originally requested to be put on shortened notice for the 12th. It was put on shortened notice at that time. It was noted that given the shortened time, anybody could file anything without a deadline and can even show up at the hearing and make themselves be heard without previously filing papers.

It got adjourned for another week, which essentially puts it on regular notice. I did get pleadings yesterday in opposition. I was in hearing most of yesterday but did make sure to read everything. I confess, I have not read all the exhibits. I know there were voluminous, and I didn't have a hard copy of those. But I have gotten through everything, so just to let you know where I stand in terms of the state of play for the motion.

So with that, as it is the debtor's motion, I'll start off with the debtor and hear from you first.

MR. FISCHOFF: Good morning, Your Honor. So it is the debtor's motion, and the debtor is seeking -- and by the way, we have not had a court status conference yet. Would the Court want me to advise of a little bit of status? I can, or go right --

THE COURT: I think a status on the case is helpful. I think, as you can tell from the objections that were filed, there are a lot of questions that a lot of interested parties have, rightly so, about the case and where things are going. So a status would be helpful.

MR. FISCHOFF: Okay. So this case was filed on December 21st, 2023. And it was filed -- it was precipitated by the entry the prior day by Judge Howell in the Federal District Court for the District of Columbia, where the court entered an order authorizing the Freeman plaintiffs to enter and force their judgment on an expedited basis. So while the debtor had been reviewing options, the entry of that judgment on -- of that order late on December 20th accelerated the debtor's thinking, and this petition was filed the next afternoon.

Now, ideally, as attorneys for the debtor, we would have liked additional lead time to prepare and get everything assembled. So we're now in the process of getting the

schedules prepared and filed. We're getting the retentions in place. But the debtor has counsel who has been representing him in both the Freeman matter and some other matters pre-petition, and we're working on getting those retentions straight with the U.S. Trustee so they can continue with the retention going forward. But since there's a history of payment, we need to get those details. So we're a little bit behind the eight ball, but we hope by next week it'll be straightened out.

I can tell you that the debtor's schedules -- and there's obviously a lot of press about this case. So the debtor's schedules are going to indicate no surprises. The debtor owns two pieces of real estate, has some exempt IRAs, and he's trying to earn a living with his radio and podcast show. So there's no pot of gold at the end of the rainbow, and the debtor is going to give full and complete disclosure.

The debtor doesn't have an intention of dismissing this Chapter 11 by somehow, as it may have been stated in some papers, using this bankruptcy as a sword and then maybe dismissing it later. The debtor has needs for this reorganization, not only because of the judgment of approximately 148 million by the Freeman parties against him, which obviously, the potential immediate enforcement of that was the precipitating cause, but he has other financial issues. He's currently suspended from the practice of law, so he can't

earn any income right now as a lawyer. So his income is limited. And he has some obligations that have to be dealt with, and we intend to deal with it.

Now, as far as this motion goes, there was a deadline to either file motions to address the judgment, either to vacate the verdict or to modify the verdict and/or to file a notice of appeal. The outcome of whatever the status of that finding might be is important to the debtor's estate and the debtor's creditors. 148 million swamps the creditor body. And whether that's dischargeable or not is something the Court will ultimately decide down the road.

But right now, it's important for the debtor to preserve and exercise its rights to address that verdict with the post-verdict motions and/or if necessary, at the conclusion of those motions, to file the appropriate notices of appeal. The sooner the debtor processes those post-judgment motions, the sooner this case has a better indication of where it's headed. Now, I know --

THE COURT: So let me ask, and this sort of segues into the motion, what is it that the debtor actually wants to do? Because there's some discussion in -- I know the Freeman judgment creditors have -- they're okay with certain things, but what's clear from their objection is the notion that it's lifted so the debtor can do whatever the debtor wants is not a notion that they're comfortable with.

And certainly, there is case law that says it's inappropriate to lift the stay to relitigate adjudicated issues, to just continually relitigate issues. And there certainly also is the backdrop of this case, where there's a concern about republicizing the statements that were the source of the litigation in Freeman. And so there are quite a few guardrails that the objectors are concerned about.

And so rather than thinking about this theoretically, the question is what does the debtor actually want to do. Right. Do you do this appeal. I certainly would understand, based on my prior life as a litigator, you file a motion for a new trial or to challenge something about what the district court has done, but you file it in the district court, that that would extend the time to file an appeal.

So perhaps it makes sense, rather than think about this theoretically in terms of carte blanche, but to think about it very specifically in terms of exactly what the debtor wants to do.

MR. FISCHOFF: Okay. So what the debtor wants to do -- and there is counsel, Joseph Sibley, who's a representative of the debtor in that matter, he intends to continue. We'll be filing retention papers for him. And by the way, it's not a drain on the estate because there are -- I know I'm getting off to the side for a minute, but I just want to address it. His fees have been paid by two legal defense

funds and will continue to be paid by those legal defense funds. So it's not a drain on the debtor's assets, nor a drain on the creditors --

THE COURT: Although there was a concern raised in one of the papers about there's no disclaimer of the notion that those fees have paid. That way, there won't be a request to have the estate compensate for those fees if they're paid by another party. So is there anything you can tell me about that? In other words, if there's a representation those fees are going to be paid by somebody else, there's going to be no recourse against the estate for those fees that are going to be paid --

MR. FISCHOFF: Correct.

THE COURT: -- by that third-party.

MR. FISCHOFF: We'll be filing the appropriate Lar Dan affidavit, and I can even disclose who those funds are, if the Court requires, or we can wait until the retention papers are filed next week. But that was just an aside.

What the debtor wants to do, and this is based on discussions with counsel who's been representing the debtor in this matter -- I'm not litigation counsel in it, so I'm just passing on my knowledge from my discussions with him -- is he wants to file a motion either for a new trial or to modify the verdict because he believes the verdict on its face is unreasonable. And when we say --

THE COURT: Well, let me ask you more specifically about that. I have gotten up to speed in the papers that have been filed about some of the history of the Freeman litigation. I obviously don't profess to be an expert or even have complete knowledge of all the basics, but I certainly have been given a lot of information that's helpful.

And one of the concerns that's been raised, one of the many concerns that have been raised, is what is it that's the focus of the requests. And that concern has been informed by the debtor's involvement or lack thereof in the Freeman litigation. Right. So there's a judgment that has a fairly, I guess, lack of a different adjective, colorful history leading up to it in terms of -- I'm sure the district judge wouldn't use that term, but dealing with discovery, lack of compliance, and various things and the judgment being entered as a result of the debtor's lack of involvement in certain activities that are traditional leading up to a trial. Then there's the damages phase.

So I'm trying to get a sense, and I think it would be helpful for all parties to get a sense, of exactly what it is that is requested to be done here. The motion itself that I received is exceedingly brief. It's fairly pro forma. I think it's probably five pages of content. One page is the double-spaced recitation of the Sonnax factors that are relevant in these kinds of motions. And there's only really two paragraphs

about what it is that -- how those apply or what what's going to happen and what the debtor wants to do.

And obviously, there's been a lot of litigation, so as expected -- and probably you anticipated it; certainly I anticipated it -- a lot of parties have weighed in. So a lot of the concerns are heightened by the fact that people don't know what it is that the debtor wants to do, and that really affects how you look at the motion and how you analyze what should happen, whether the motion should be granted.

MR. FISCHOFF: Understood. So the debtor believes the dollar amount of the damages in its face is unreasonable and should be readdressed by the Court, and that would be the motion that the debtor would be seeking to file, whether it's called to vacate the verdict in the dollar amount or to modify the verdict.

THE COURT: So it's a damages-only motion?

MR. FISCHOFF: Yes, Judge.

THE COURT: All right. My understanding is that the debtor didn't present any witnesses in the damages phase. So that's another concern that I think has been raised by the parties about what is it that the debtor is going to seek now in light of the fact that the debtor had an opportunity and chose not to present any witnesses. How are we to understand what's going on here in light of that?

MR. FISCHOFF: Okay. Well, I'm not the litigation

counsel in that case, but my understanding is that they want to address the calculation of damages because they think the amount alone establishes that they're punitive and grossly unrelated to the actual damages. So and then upon addressing that, they will have created a record for the appeal because if that motion is denied, then their right to appeal arises and they'll appeal it.

And I think it's important that the debtor be allowed to do that in order to find out is this a real 148 million that has to be dealt with in this Chapter 11, or is it some other number that might be redetermined. As I said, we're not looking to litigate the merits, only to the extent that they affect the damages. But agreed, the liability portion was entered without testimony, and I don't think that's subject to challenge at this.

THE COURT: So again, I'm not familiar enough with the Freeman litigation to understand the exact scope of what happened or didn't happen in the damages phase and what the extent to which, if any, the debtor availed himself of his opportunities to present evidence and be heard. That's for something that obviously the district court and the parties in that case to address.

The other or one other issue that's been identified relates specifically to the stipulation that was filed in that case and the language used in terms of the conduct. And that's

raised in the context of dischargeability, and as we all know, the Bankruptcy Code provides for certain kinds of debts to be nondischargeable. There are many different categories of debts and many different standards within the statute. But here, the as one of the objections notes, that Section 523(a)(6) of the Bankruptcy Code is one of those provisions, and the objectors point out that the language that was agreed upon by the debtor tracks, in the objector's view, the language in the statute.

And it gets to the very legitimate question of is nondischargeability already been conceded. Again, it's not an issue in front of me today. I'm raising the arguments and concerns that have been raised to me. But that, I think, is a legitimate question in the sense of what is appropriate to spend money of the estate on. You said there's no pot of gold at the end of the rainbow, so there's limited estate resources. So the point is that in making Sonnax findings and findings of cause for lifting the stay, these are the kinds of issues to, to grapple with.

So as that issue has been raised -- and again, I mentioned the language used in the Freeman litigation in the joint stipulation regarding entry of final judgment because that's what the parties raised, and that says to me that they have a very legitimate basis for raising the issue and the concern. So what can you tell me about that?

MR. FISCHOFF: Well, I think that's why it's important

to allow the debtor to pursue these post-verdict motions in order to find out the exact amount that may or may not be dischargeable. I think today, it's premature. I know in the opposition they said, well, we should determine dischargeability first. And I think it should be the other way. We should know what we're talking about as to what may or may not be dischargeable, and then we could --

THE COURT: Well, for that verdict, the argument really is that that's the amount of what the Freeman judgment plaintiffs say. That's a question of what amount is nondischargeable. But that the finding itself, and they cite to the docket 138 saying what the language is in the joint stipulation regarding entry of final judgment, that Defendant Giuliani engaged in extreme and outrageous conduct, which intentionally and maliciously caused the plaintiffs to suffer emotional distress. And it goes on to, "defendant's conduct was intentional malicious, one, and willful". And again references the statute, the bankruptcy statute, that uses the terms willful and malicious.

So the idea is if, again, the argument's made -- and it's not a frivolous argument; it's a legitimate question -- whether there's a point to this. If it's nondischargeable, it's going to pass outside of bankruptcy anyway. And so I don't know what it would mean in terms of exactly the ordering of what things should happen in this case, but it's a

legitimate question.

So what, if anything, views do you have as to this joint stipulation and the nondischargeability question?

MR. FISCHOFF: Well, I think that in order for the Court to make a determination under 523, it would have to have before it if the question presented appropriately in an adversary proceeding, and after that adversary proceeding is commenced, then the Court can address whether or not that particular stipulation is binding on the debtor and meets all the appropriate elements to sustain a nondischargeability complaint. But I understand the Court's interest in that. But it's not before the Court today, and I think it's --

THE COURT: I understand, but I guess I think what I'm hearing from the objectors is that they're trying to get a sense of what the preview is. Is there a -- and again, they can speak for themselves when they stand up, that in their view, there's nothing to talk about. And so they're trying to get a sense of, well, if you're going to challenge that, what are you actually going to say, and if you have nothing to say, Judge, why should we be spending money on this litigation.

MR. FISCHOFF: We know it's an issue. We're all bankruptcy professionals here, so we know that's an issue. Maybe it's the elephant in the room, but I'm not prepared to concede such an issue at this point.

THE COURT: All right. So what other things do you

want to tell me in connection with the motion that you filed?

MR. FISCHOFF: Well, I think you've addressed kind of a summary of all the issues. I could go through -- I mean, the Court's now aware of all the facts. You're aware of -- the Court's intention -- I know the papers by both the creditors committee and the Freeman plaintiffs have raised the issue about that the debtor is using the bankruptcy stay to avoid posting a bond. But we know, in April of 1988, the seventh-largest oil company in America filed Chapter 11 in this -- well, not this building, but in the White Plains division, because they could not post a bond when Pennzoil had about a nine-billion-dollar judgment against them --

THE COURT: No, we're aware of --

MR. FISCHOFF: -- which was real money then. Yeah.

THE COURT: -- the Texaco case, and I've had Texaco cases, so to speak, that are filed because of a judgment. And I think the authority is that that doesn't necessarily -- it comes up in the context, as I understand it, of people arguing whether a filing is a bad-faith filing or not. I don't have that issue in front of me. I don't have such a motion, so I don't need to address that. I think what those cases stand for are the fact that, as a theoretical matter, a judgment that motivates a bankruptcy is not in and of itself necessarily dictate that it's a bad-faith filing. I think courts look at the facts and circumstances of each case.

MR. FISCHOFF: Okay. So I believe, then, we've -- I believe we've explained to the Court more clearly than in the papers the debtor's intentions and plans, and at this point, I'll defer to my colleagues and just reserve a few minutes if necessary when they've concluded.

THE COURT: All right. So with that --

MS. SCHWARTZ: Judge, before we get to the motion, can we just address the status for a moment?

THE COURT: Let me do this. Let me hear from parties in terms of their issues because I think status bleeds into the motion, as I think we've already discovered. So let me hear from everybody here in the courtroom, and then I will make sure everybody gets a full chance to be heard.

MS. SCHWARTZ: Okay. Thank you, Your Honor.

THE COURT: Hybrid hearings are wonderful in theory. They can be a little bit more challenging in real life. But with that --

MS. SCHWARTZ: Thank you.

THE COURT: -- let me hear from the Freeman plaintiffs, and if there's another nomenclature you'd prefer that I use. I don't think judgment debtor is a good one since we have a bankruptcy debtor so --

MS. STRICKLAND: This is not going to work.

THE COURT: Feel free to do it from the table. Whatever --

MS. STRICKLAND: Okay.

THE COURT: -- works best for you.

MS. STRICKLAND: Great.

THE COURT: And just, exactly, make sure that your other microphone is handy.

MS. STRICKLAND: I'm not used to doing this sitting down.

THE COURT: Well, you can stand, sit.

MS. STRICKLAND: No, it's okay.

THE COURT: Whatever works.

MS. STRICKLAND: I got it. Good morning, Your Honor. For the record, Rachel Strickland of Willkie Farr & Gallagher. We are counsel to Ms. Ruby Freeman and Ms. Shaye Moss. My presentation is remarkably longer, but Your Honor has read a lot, and I can tell from the questions that much of this will not be new to you. So I would encourage you to cut me off or have me skip things as Your Honor sees fit.

THE COURT: Well, your papers are extensive. I've read them. I've marked them up. I have stickies. I have notes. So I don't need you to go through them all.

I guess I would say two things. One is to hit the highlights of points you think particularly resonate. And the second, and maybe we should start with the second, is in light of hearing what you've heard, I do note that you have language in your opposition about what your clients can live with and

what they can't live with. And I'm interested in hearing your thoughts about the dividing line and the thinking behind that as to what makes sense and what you're most concerned about because it sounds like there's certain things you -- you, in fact, helpfully attached to a proposed form of order saying, well, Judge, here's what we could live with.

But obviously, this is where, as somebody who didn't participate in the Freeman litigation, I am not nearly as well informed as you all, and I never will be. So the thinking behind your dividing line and what's acceptable and what's not and why, it would be really helpful.

MS. STRICKLAND: Understood, Your Honor. Our clients are obviously the centerpiece of this case. I'm not aware of any other Chapter 11 case where the first hearing was convened solely for a debtor's motion to lift stay. The relief that Mr. Giuliani is seeking is even more unusual, since our claims are liquidated already and in all likelihood, as Your Honor noted, are nondischargeable.

Before I go through the merits and the dividing lines, I'd like to address two things. One, I want to propose a road map for the cases for Your Honor's consideration that we think will drive efficiency so that creditors who have been wronged by Mr. Giuliani can get compensated. And then second, I'd like to give you some background on our client's claims.

So for the road map, it will be no surprise that at

the end of today, I'm going to ask Your Honor to deny Mr. Giuliani's stay relief motion. And then following that, if he doesn't seek to dismiss his own case, I suggest that Your Honor first consider the issue of whether my client's claims are nondischargeable. And from there, after parties kick the tires on the schedules and statements and investigate the extent of Mr. Giuliani's assets, it can be determined whether there's any prospect whatsoever for a plan of reorganization or emergence or whether this case is yet another diversion.

So for background on the claims, at the outset, I want to note that this is not about politics at all. My clients have liquidated a 148-million claim against Mr. Giuliani that Your Honor should think of as a self-inflicted wound. He said and did despicable things and then when he was sued, sat in court and did very, very little. He flouted district court orders. He deliberately ignored discovery requests. And he's not just some guy who was mayor. Mr. Giuliani was a Southern District of New York U.S. Attorney and a DOJ Associate Attorney General, a man literally in charge of the civil division. So he has made his bed here.

On Election Day, November 3rd, 2020, Ms. Freeman and Ms. Moss served as election workers at the State Farm Arena in Fulton County, Georgia, and their job was to help process absentee ballots. Being that it was the middle of the pandemic, there were a lot of them. And election day was very

busy, but it was pretty uneventful, and really, nothing happened to them for the next couple of weeks.

That all changed on December 3rd, 2020. On that day, Giuliani began claiming on television, radio, and social media that surveillance footage of Ms. Freeman and Ms. Moss from Election Day was proof of fraud. He cited Ms. Freeman and Ms. Moss as the definitive reason then-President Trump lost the election in Georgia. And to put these statements in context, Giuliani, an experienced lawyer, made these statements after the Georgia state election officials had conducted multiple recounts and confirmed that the results were valid.

And Giuliani got very granular in his discussion of Ms. Freeman and Ms. Moss. He said that they were picked -- that they had kicked out election observers for the purpose of counting illegal ballots, hid illegal ballots in suitcases under tables, counted the same ballots multiple times, and passed around a USB port like it was crack cocaine to upload illegal ballots. They also accused Ms. Freeman of having a criminal record.

The targeting of these two women was intentional. In fact, there is a strategic plan bearing Mr. Giuliani's name that was provided to the Trump campaign. And if there was any lingering doubt, the day after his very first public statements on December 4th, and the days after, law enforcement and Republican officials in Georgia publicly and repeatedly refuted

Mr. Giuliani's statements.

THE COURT: Ms. Strickland, I don't want to -- I understand how important this hearing is and that your clients are heard in the bankruptcy. But you do have to recognize I'm not the district court in DC who has entertained all this. So I do have the sad story in front of me in your papers. So I'm okay if you hit the highlights briefly, but just in the interest of efficiency today, I'd ask that you keep to the highlights, just, again, recognizing your clients, how important it is that people feel heard in court. That's very important. But I do realize we probably have quite a bit to talk about as to the motion itself.

MS. STRICKLAND: Very good. Skipping. So he gets sued. Moves to the discovery phase. He sits there. He barely participates. He doesn't preserve materials. He produces almost nothing. Let me give you a sense of what he produces: Hundreds of documents consisting of nonreadable computer code, emails advertising a year-long spiritual apprenticeship course, memes about George Floyd, and death notices for The Washington Post. Other parties produce things that we know he has. He doesn't produce them.

This goes on for months and months. The district court is frustrated. He's ignoring orders. My clients file a motion for sanctions, and in response to that motion, he doesn't defend his conduct. He files two documents in which he

stipulates to all of the elements of the claims. He conceded that he defamed our clients, intentionally caused them emotional distress, and told the court that liability should be treated as though there's default liability.

Your Honor, I have the stipulations. I can pass them up to you if you would like.

THE COURT: Well, that's the one thing I didn't see a copy listed in the exhibits of the judgment. And I don't know that I have -- I don't know if the stipulations are -- I think it's just referenced the docket. So I would appreciate those because I think they are helpful background for purposes of understanding things that are relevant for the bankruptcy going forward.

MS. STRICKLAND: Certainly. May I approach?

THE COURT: Yeah. Please. Thank you. It is helpful to have the documents from the District Court in the District of Columbia, an old stomping ground of mine, as they speak directly to what that court did. And so that's helpful.

So what you handed me is a small binder of some six tabs, all of which contain, well, either pleadings or orders or decisions of the district court in that case and various docket numbers. And so thank you for that. Proceed.

MR. FISCHOFF: Thank you, Your Honor. So the first two tabs are actual stipulations, where they are signed by Mr. Giuliani. I would point you to tab 2, which is a very short

stipulation. In paragraph 1, he stipulates he's made the statements, that they were defamatory. Paragraph 2 says he published the statements to third parties; 3, if they were facts, they were false; 4, he doesn't contest the factual elements of intentional infliction of emotional distress; 5, he's liable for punitive damages; and 6, that there's default liability.

Throughout this, and this goes to what is it he could actually appeal, he preserves three things, the right to argue that the things he said were his opinions or constitutionally protected, the right to seek set off, and you'll see in a later order, there actually was a two-million-dollar set off, and a reservation as to whether his statements cause damages and what amounts. So --

THE COURT: And that's in paragraph 3, if I'm looking in the right spot?

MS. STRICKLAND: The reservations are littered throughout, but they're repetitive.

THE COURT: All right.

MS. STRICKLAND: It's the last sentence of a couple --

THE COURT: Okay.

MS. STRICKLAND: -- of them.

THE COURT: I see it.

MS. STRICKLAND: So following these stipulations, on August 30th, District Judge Howell enters an order approving

the motion for sanctions. But she doesn't rely on these stipulations, which are qualified. Instead, she goes to her record. She's got deposition testimony, numerous witnesses, documents others have produced, and she independently determined that the elements of the causes of action had been satisfied. So not only do we have this stipulation, we also have the record.

Following the entry of the sanctions order, Judge Howell orders that a jury trial be held to determine the amount of compensatory and punitive damages owed to Ms. Freeman and Ms. Moss. That's where the 148 comes in. And then there's something else that bears noting in the binder I gave you, which is in tab 6.

When you go to tab 6, you look at what is the reasonable likelihood that there could be an appeal here. So the procedural posture would be to go back to Judge Howell and say what the jury did was outrageous and these numbers are super high. But if you look at tab 6, which is the memorandum and order that Judge Howell entered at docket 144, and you turn to page 11 of that document, Judge Howell has considered this and weighed in on it.

Towards the bottom of that page 11, she says:

"The obvious fact that the jury's unanimous awards were conservative as to plaintiffs' requested compensation for reputational harm due to Giuliani's

defamation, per se, based on the expert's calculation of the cost of repairing their reputations and the jury's punitive damages award nearly equivalent to compensatory damages rather than multiplied by up to four times compensatory damages, any attempt to reduce this award faces challenges."

So it's not as if this hasn't been asked and answered. All of the issues here are things that have been carefully considered by the district court. So the notion that Mr. Giuliani is going to be able to quickly file some motion and have something reconsidered is just --

THE COURT: Well, I understand that, and you have good reasons for making the arguments you're making. Obviously, you recognize that in a traditional bankruptcy case, if there is such a thing, when there's a -- that is motivated by a judgment or involves a judgment as a debt that the debtor's dealing with, bankruptcy courts don't necessarily get behind what's going on in a trial court and say, well, you have whatever rights. The trial court and the appellate court will sort it out.

I do think there's a legitimate concern here about the expenses and the cost and the delay. I guess my question for you is to how to sort out those principles in this particular case, and maybe you've already done that with your road map in terms of analyzing how these competing interests best play out.

MS. STRICKLAND: Sure. Well, there's no shortcut to what Mr. Giuliani's counsel says his cocounsel litigation firm wants to do. The process by which Mr. Giuliani could get to the end of the road includes motions that, A, are very unlikely to succeed, but B, largely result in a remand and going back to square one for our clients, where it would be a very long and protracted and expensive process. And while I appreciate Mr. Fischoff's representation that he's not aware of litigation counsel seeking to dissipate the assets of the estate, the retention filings that they made on Your Honor's docket actually don't say that at all.

THE COURT: No. I recognize that that's a very legitimate concern, and we don't have that nailed down yet.

MS. STRICKLAND: Right.

THE COURT: But to the extent that -- again, thinking about this case in traditional principles, if somebody said, well, we prevailed on appeal and there's a lesser number that the, that the court thinks is appropriate, that's sort of an odd argument to use to say the stay shouldn't be lifted. I understand the concern about the amount of money and that concern, coupled with the amount of money involved and the looming nondischargeability case decision that would have to be made.

The reason I mentioned nondischargeability, just to sort of get it out there, oftentimes creditors in court, often

in state court, will come in and say this is nondischargeable. But what they have just facially and almost immediately can be recognized as not using the language of the Bankruptcy Code, which is very specific. And the reason why I call this out here as something a little different than what I usually see is it uses language that detracts particular sections of the Code here and makes it look facially to be in a different posture.

MS. STRICKLAND: Not our first rodeo, Your Honor.

THE COURT: Well, so again, no decisions. That's not a decision that's to be made today. I'm just pointing out things that have been argued to me, looking at the documents, that it puts it in a different posture than what I usually see.

But I guess my thought is what do you think should happen, looking at these principles. It sounds like in your papers that you were okay with, or may be okay with -- maybe that's a better way of saying it -- what's now been specifically committed to as a specific motion dealing with damages, the damage portion of the trial, and that if the automatic stay is -- I think in a case like this, it may be that it has to be taken step by step by step, as opposed to a broader approach.

But is that something you're -- it look like in your papers, that's something your client could live with, with the understanding that the funds were coming elsewhere, again, subject to that being the case as may be played out in the next

week or two. Is that something your client still can live with; am I understanding that correctly?

MS. STRICKLAND: What we're prepared to do -- no one's looking to time someone out or to have their rights expire. If they want to file pleadings that preserve their right to -- whether it be seek a new trial, whether it be revisit damages, and they want to file things so that we aren't looking at tolling and 108 and issues of that nature, we are fine with that, and they need do nothing else. But then the stay comes down.

THE COURT: But does that mean anything associated with that? So it's a motion -- these are my words, not counsel's words, but a motion to say the damages should be vacated because here's all the reasons, which presumably would then lead to a response by your client, and then the district court may or may not decide to have argument. I assume that would all be part of that silo.

MS. STRICKLAND: That would be part of that silo.

THE COURT: All right.

MS. STRICKLAND: But that's it. For anything else, Mr. Giuliani needs to pass three hurdles that he can't clear. One, our position is he has to actually ask for relief that Your Honor can grant. Two, he has to meet the burden to show that cause exists, which I don't think it's in the papers, and I certainly didn't hear it today. And then if all of that were

to occur, we get to the Sonnax factors that don't balance in his favor. I'd like to address those three hurdles.

The motion impermissibly seeks to appeal while asking you to stay our clients from proceeding to perfect their liens or otherwise enforce their judgment. As Your Honor knows, case after case rejects attempts of debtors to use Chapter 11 to obtain a litigation advantage.

THE COURT: I agree there's a concern -- there is a concern about sword, shield here. Right. That's what the cases talk about. Judge Glenn and the ResCap case uses that, and he's quoting from another case.

At the same time, I think the case law is a bit mixed about the notion of saying, well, someone would ordinarily have to post a bond to get a stay, and instead, they file for bankruptcy and they get a stay, is that something that's permissible. Is that kosher, for lack of a more legal term. And cases seem to be a little all over the map on that, sometimes looking at whether it's a judgment that the debtor has the financial wherewithal to actually pay, as opposed to one that the debtor would essentially need the bankruptcy to reorganize.

So I don't know -- I understand the concerns and particularly in light of the findings of the district court at various junctures about the case that you all lay out in your papers. But my thought is that I think there's some benefit to

taking this step by step by step so the new trial stays any obligation to file an appeal, if such a motion gets filed, and then we can monitor things and see how things go. Meanwhile, the bankruptcy will proceed. Schedules will get filed. There will be discussions. And I would imagine that your clients will file some sort of pleading, whether it be a nondischargeability, adversary, or something else that tees up other issues.

And then my thought is to take it as a developing situation. We all do better with the specific facts as they unfold, rather than trying to guess. And again, there's a complicated history in the district court in DC that I want to be respectful of, and taking it on a step-by-step basis, given all those concerns, seems to be the way to go. And certainly, that's also the message I took from your papers, that what you -- again, you can correct me if I'm wrong, that what you were against is a carte blanche, here, go off and do what you want to do in that litigation and that that's not something that you're comfortable with. I understand that.

MS. STRICKLAND: Your Honor, I want to back up two steps and unpack a couple of things. One, we are not looking to litigate again and relitigate again with Rudolph Giuliani during the pendency of these cases. We believe that Your Honor is going to establish that our claims are nondischargeable. And when it's over, we'll be litigating.

If they want to preserve their right to litigate, they can do that. But we're not looking to be exchanging papers in district court or anywhere else with him while he is elevating his appellate lawyers in priority over general unsecured creditors in these cases and diminishing administrative expenses.

THE COURT: Well, two things on that. One is I don't think we know yet. There's a question about where the source of funding is. The papers are going to get filed. We have to sort that out. You're not alone in having that concern. I know the committee has that concern. I know the U.S. Trustee's office has that concern. I see Mr. Schwartz raising your hand. I get it. And trust but verify, isn't that the phrase, so I understand that.

But as to the notion of exchanging papers, I guess I'm a little confused, and maybe I'm not following. If they file a motion as, as has been represented, that the intent is to lift the stay to file a motion to deal with the damages in the Freeman litigation, I would imagine that would involve the exchange of papers. And whatever the district court -- it's not my job to micromanage the district court's docket. It's inappropriate. And so the district court will do whatever and manage that issue.

If the district court says, I don't want to see that motion now or there's a reason not entertain that motion, the

district court can do that. If district court says, I get the opposition. I'm going to have a hearing. Whatever the district court decides is appropriate.

On how to deal with that silo, I would think if it involves the filing of papers, I would think that that's just how it goes. It would be a logical consequence of the filing of the motion, unless I'm missing something.

MS. STRICKLAND: Well, I also want to go to your --

THE COURT: But let me just see if I can get that nailed down because I want to make sure I understand your position because I thought we had agreed on that, but I might be wrong about that.

MS. STRICKLAND: Your Honor, I think you have gone past our comfort zone in the sense that he can preserve the right to argue whatever he wants at the appropriate time. We don't believe that appropriate time for that litigation is right now. We are not looking to toll Mr. Giuliani out. If he wants to preserve things by making his filings wherever he wants to make them, he can do it, but that's it.

And this is where your summary of the case law matters because you're right that the courts looked at a whole bunch of different factors in this type of litigation. But the cases where courts looked and said, well, is this a litigation tactic, is there an ongoing business, and the factors you articulated were in the context of whether it was a bad-faith

filing where the case should be dismissed.

What you won't find are debtors who do seek as defendants to go forward with a lift of stay for litigation they've lost who don't have to post the bond. That, you don't see. And in fact, if you look at Wally Findlay, if you look at the cases, the courts say, we are not going to be a bankruptcy substitution for supersedeas bond.

THE COURT: But again, I think the cases are complicated, and it depends on the facts and circumstances. But a lot of those cases, it sounds like, have motions to dismiss for various grounds. And maybe I'll get such a motion, maybe I won't, but I can't essentially assume such a motion. I have what I have in front of me. And my thought is that, one, there's significant questions as to where the funds are coming from. That's not yet figured out. And two is that I wanted to know precisely what the request was.

But when it comes to saying, well, he can make the motion but nothing further can happen, that seems to me that I'm then putting myself as telling what the district court in DC should do in terms of -- the district court, it'll be a motion in the district court. The district court judge will figure out how to handle that in whatever way is appropriate. And if I start telling the district court, well, he's got to file it, but nothing else is going to happen, I'm sticking my nose in where it shouldn't -- where it shouldn't go.

And so certainly, you have the right to make whatever arguments you want to make in the district court as to how far to go with those things. Right. I can understand you have arguments to say, Judge, this should be rejected out of hand. This should be stayed because we've got the bankruptcy and we're making arguments to the bankruptcy of X, Y, and Z. But to me, that's the proceedings in the district court, and I am not supposed to be -- I don't think it's appropriate for me to be micromanaging what that court does.

MS. STRICKLAND: I agree. I think that that's -- I think the conclusion is the same. Right now, we have an automatic stay. No one's moving. You're not micromanaging anyone.

The debtor is saying, we want you to lift the stay. The district court has already spoken about what happens when the stay is lifted. The posture that Mr. Giuliani returns to is there is already a district court order that says you don't even get thirty days under Federal Rule of Civil Procedure 62(a). I have dispensed with it --

THE COURT: No, I understand that. But again, what I understand the request is to file a motion dealing with damages. And if, in fact, no estate money is going to be spent, which is a significant issue, then the question is how the district court wants to handle that. There are a lot of things that happen after a judgment, stays, enforcement,

different kinds of stays. We've got a bankruptcy stay here. There are stays, as you said, that sort of arise naturally after a judgment. And then there are stays that you can request pending appeal.

So my thought is if there's a motion seeking to challenge the damages, then the district court will decide what to do with that. And any other requests for the debtor to do something other than file that motion and do whatever the district court directs in the natural course of business, the debtor would come back here. And I think, thinking out loud, that's the place I'm comfortable being because this idea of putting in a placeholder and then stopping, that request is something that certainly can make to the district court.

But the district court may have strong views one way or the other on exactly what should happen when a motion like that is filed. And I just don't see myself as a party, that the bankruptcy should not interfere with that. Whatever naturally comes from the consequence of filing that motion, the district court is more than up to the task and the right place to decide that.

So I'm not comfortable, sitting here right now, with sort of a half measure where something's filed, but then I've issued the kind of stay I've never issued before. You say you can file it, but you can't pursue it. If I were a district court -- a trial court, I really wouldn't know what to do with

that. And one of the things that we have to do here in bankruptcy court is when interacting with trial courts and state matters is issue things that are clear and that where the trial court doesn't have to parse what is going on in bankruptcy and become an expert in bankruptcy to figure out how to appropriately handle that.

So my thought is if that motion's filed, whatever comes as a result of that motion, that's for the district court to address. That would be clear. It would be defined. It would not be hard to follow for anybody. And then anything else would come back. So that's, again, thinking out loud here, sitting on the bench. But I appreciate the colloquy back and forth to try to figure out --

MS. STRICKLAND: Right.

THE COURT: -- some of the concerns we're going to bump into as the case progresses.

MS. STRICKLAND: We're okay going back and forth with the district court on whether or not there should be a new trial. The piece where I get stuck is appeal. Mr. Giuliani can't --

THE COURT: Well, I think I -- what I'm hearing is that the request is to make this motion for essentially a new trial on damages or anything dealing with damages and that that's going to come first and that after that, the debtor will come back if it wants to seek to lift the stay to pursue an

appeal because you'd have to get a decision on that motion first; am I understanding correctly?

MR. FISCHOFF: Yes and no. So if the motion is denied or whatever the outcome, the notice of appeal is then due within approximately thirty days. Different than a motion, after you file a notice of appeal, there's time to perfect. So we would ask that the Court authorize that if there's an appropriate reason that we can file the notice of appeal, but then we'd have to come back to this court to perfect it, just because we don't --

THE COURT: To take action in the --

MR. FISCHOFF: Correct. Yes. So we want to just file the appeal --

THE COURT: Of course, the DC circuit may have some views about an appeal on its docket that's sitting there in perpetuity. But we'll burn that bridge when we come to it.

So there's two observations here. I'm happy to make myself available if it promotes justice and clarity. If the district court makes a ruling and then the question comes up and you have thirty days, I'll have a hearing. That's fine. But if everyone agrees that a notice can be filed -- again, I think this may be a question of drafting, but if it's just a notice, that maybe something Ms. Strickland's client can live with. It may not be. I don't know.

MS. STRICKLAND: I want to be -- I want to be clearer

than I have been. What Mr. Fischoff said is --

THE COURT: I will say, I did clerk for a district judge in the District of Columbia. And so when I think about telling a district judge in the District of Columbia what to do -- what they can do and what they can't do, I do have the voice of Charles R. Richey in my head. So I will tell you that I think I understand where he would be coming from. So that informs my decision making.

MS. STRICKLAND: Excellent.

THE COURT: Ms. Strickland.

MS. STRICKLAND: So let's talk about what the district court in the District of Columbia has done. They have a default judgment. They have a jury trial. There's the damages award. We then go back and forth on whether or not we can enforce immediately or there's going to be any stay. Forget thirty days. Thirty seconds.

THE COURT: I got it.

MS. STRICKLAND: Judge rules, no, you can enforce immediately. Your choice is file a bond. They say, we'd rather file for bankruptcy. Now, they're coming back. They're saying, we want a new trial. I am telling Your Honor, if they want to file a motion for a new trial, we will agree consensually to go to Your Honor and say, please lift to stay for that purpose only.

The minute we get to appeal, they can do one thing and

one thing only. They can file a notice of appeal. Otherwise, they have two choices. They are stayed, or the Federal Rules of Civil Procedure still apply. They apply to debtors. They apply to parties-in-interest in bankruptcy and out of bankruptcy incorporated into the Federal Rules of Bankruptcy Procedure.

THE COURT: Well, again, the DC circuit may decide to tell all of us something about that if it comes to it. But the notice of filing, the idea of filing a notice and a notice alone is something that doesn't cost the estate and it doesn't incur further litigation and I think could be drafted appropriately in an order so that everybody understands. And certainly, if the DC circuit has a different view, my understanding is they certainly have cases on appeal that are subject to bankruptcy proceedings. And so they're all very smart people. Understand the concept of a bankruptcy stay.

So that seems to be -- I'm not suggesting that a full-blown appeal go forward by virtue of the record I have in front of me. I am not comfortable with that notion. There's a lot of unanswered questions and concerns that have been raised. And so I think we're on the same page.

MS. STRICKLAND: Great. But for our suggestion of where we would be comfortable going, I think the record is pretty clear from my perspective that there's been no cause shown. And I can go through the Sonnax factors --

THE COURT: No, I --

MS. STRICKLAND: -- but nobody else did so --

THE COURT: Well, no. The committee did as well.

MS. STRICKLAND: No, I don't mean in our papers. I mean today. I have not heard the debtors go through the application of the Sonnax factors in their papers or live. So --

THE COURT: Yeah, no, I --

MS. STRICKLAND: -- they haven't met their burden at all.

THE COURT: I understand. At this point, I think you can keep your powder dry --

MS. STRICKLAND: That's what I thought, Your Honor.

THE COURT: -- on the Sonnax factors, as those are issues that we deal with regularly here in this court, and I do have a briefing by you and by the committee on that subject.

So anything else, Ms. Strickland, before I hear from the committee?

MS. STRICKLAND: No, Your Honor.

THE COURT: All right.

MS. QURESHI: Good afternoon, Your Honor. For the record, Abid Qureshi, Akin Gump Strauss Hauer & Feld. We are proposed counsel -- excuse me. We are proposed counsel to the official committee of unsecured creditors. As Your Honor will hear, when our retention application gets filed, Akin is

proposing to handle this representation of the committee on a pro bono basis in light of what I will describe as the unique facts that are before the Court.

Your Honor, if I could, before jumping into the merits, just give Your Honor a quick background on who is on the committee because I think that that bears relevance to the issue we're talking about today. There are three members, Your Honor. US Dominion Inc., they have commenced a lawsuit against Mr. Giuliani, also in district court in DC, seeking 1.3 billion dollars in damages for defamation in connection with false claims made by Mr. Giuliani related to Dominion's voting machines.

THE COURT: And if I understand, that's the lawsuit where it's been settled as to other defendants?

MS. QURESHI: I believe that's correct, Your Honor. That lawsuit as to Dominion has not yet gone to trial.

Your Honor, Ms. Dunphy is also a member of the official committee. She is a plaintiff in a lawsuit against Mr. Giuliani and other related parties that is pending in New York Supreme Court in connection with a host of sexual harassment, sexual discrimination, and related claims. And that also, Your Honor, has yet to go to trial.

And then we Ms. Shaye Moss, who along with her mother, Ms. Freeman, of course, are the judgment creditors.

So Your Honor, let me start by saying the committee

supports the opposition papers that Your Honor saw from Ms. Strickland's firm. We support their argument. From the committee's perspective, Your Honor, we of course approach this issue from the perspective of our statutory and fiduciary duties to all unsecured creditors. And from that vantage point, Your Honor, this also is a motion that we think should be denied.

So Your Honor, jumping to this issue of what should Mr. Giuliani be permitted to do at this stage in connection with pursuing a retrial of the damages question, from the committee's perspective, and while no doubt Ms. Moss and Ms. Freeman have suffered egregious harm and need to be compensated for that, we also want to ensure that any lifting of the stay does not have the unintended consequences of allowing certain creditors to jump the queue ahead of others. And so what we would not want to see is the ability for Ms. Moss and Ms. Freeman to start executing on their judgment the minute the stay is lifted because we have --

THE COURT: Then the status quo is lost.

MS. QURESHI: Right.

THE COURT: Yeah.

MS. QURESHI: Exactly. And that would defeat the purpose of being in bankruptcy in the first place. And so Your Honor, if I could, also I just want to revisit the step-by-step approach, which I think is the correct one. What we would

propose, and I recognize Your Honor is saying you don't think you have the authority to do this, but let me lay out, if I could, what we think of as the logical progression here.

So we understand that Mr. Giuliani has an approaching deadline. I believe it's February the 18th, A deadline by which if he is going to seek a retrial of damages, that needs to happen or his right to do so will be lost. Your Honor, we agree, the committee is not, Ms. Freeman and Ms. Moss are not attempting to use bankruptcy to let that deadline lapse such that Mr. Giuliani loses that right. However, I think there are some things that it makes sense to happen in this court first, before Mr. Giuliani seeks that retrial.

Number one, we need clarity on the retention application so we have a clear understanding of if there are going to be legal fees incurred, that those are not going to deplete the estate. Clearly, a very important issue.

Number two, Your Honor, is the dischargeability issue because at the end of the day, if -- and the dischargeability issue, I think, goes hand in hand with the filing of Mr. Giuliani's schedules and statements. I think the most charitable way to put it with respect to schedules and statements, Your Honor, is that the district court has found that Mr. Giuliani has, at best, a transactional relationship with the truth.

It is the committee's intention to use the bankruptcy

process to investigate what we see from Mr. Giuliani with respect to schedules and statements and his assets and what they consist of and where they may have gone. And that is all important because Your Honor, if we get to a nondischargeable finding, which we think is highly likely to be the case here, if it hasn't been stipulated to already, subject to what an investigation ultimately shows as to what his assets are, it may be the case, Your Honor, that it's entirely futile for Mr. Giuliani to engage in a new trial with respect to damages. And at that point, we would have a sense of is there a prospect for reorganization for a viable Chapter 11 plan at all.

And so from our perspective, the ideal step-by-step process would be lift the stay for the very limited purpose of allowing Mr. Giuliani to preserve the right ultimately to seek a retrial on damages. And that would consist of allowing him to make whatever filing needs to be made in order for that deadline not to lapse. Then immediately reimpose the automatic stay so everything stops. That --

THE COURT: Well, in mulling this over and at the risk --

MS. QURESHI: Yeah.

THE COURT: -- of overly complicating a already complicated situation, I certainly wouldn't have a problem if the order said this is the extent of the stay. And to the extent the district court decided in its judgment it was

appropriate to have that motion made and to not proceed further until the bankruptcy proceeds, that's fine. Again, I don't think --

MS. QURESHI: Yeah.

THE COURT: -- I have the authority to do that, and I think there are lots of good reasons that I shouldn't stick my nose in a district court's business, particularly in a case that has as many nuances as this. But certainly, to the extent that the district court may say, what does the bankruptcy judge want to do; I don't want to step on the bankruptcy -- step on the toes of the bankruptcy proceeding, certainly, the order could be drafted in a way to say that the district court should handle that motion, however it deems appropriate, and understanding that the bankruptcy court takes no position on whether the motion needs to be prosecuted at this time or however you wanted to phrase it --

MS. QURESHI: Right.

THE COURT: -- which essentially would serve the needs of preserving the right, and the district court then can make that decision.

MS. QURESHI: Your Honor, from our perspective, I think that's entirely appropriate. Give the district court the ability to alter that if the district court so chooses. And again, we would want to ensure that that order is also very clear that the stay is not being lifted for purposes of Ms.

Freeman and Ms. Moss actually executing so that the status quo can be preserved.

THE COURT: No, I think that's fair.

MS. QURESHI: Yeah.

THE COURT: And that's the whole sword-shield --

MS. QURESHI: Right.

THE COURT: -- thread in the case law on motions to lift the automatic stay, that it can't be used as a sword and a shield, that it's designed to preserve the status quo for the benefit of all creditors in the posture that they're in. And so I think everybody agrees that that's the right way to go.

I do think Ms. Strickland's comments, I think, are very much of the sword-shield variety, where she's saying if you cross a certain point, that it becomes unfair to the Freeman plaintiffs to say we're now having to fight with one hand tied behind our back. Whatever metaphor you'd like to use about something being unfair. So that's how I took the comments.

MS. QURESHI: Yeah, and we agree with that, Your Honor.

THE COURT: All right.

MS. QURESHI: That's all I had, unless the Court has questions.

THE COURT: I don't.

MS. QURESHI: Thank you.

THE COURT: And I see counsel for the debtor rising. I'm going to hear from the --

MR. FISCHOFF: Yes.

THE COURT: -- U.S. Trustee's office in a minute, but if you wanted to chime in.

MR. FISCHOFF: Yeah.

THE COURT: A lot of things have been said that that to the extent there's some clarification you want to make.

MR. FISCHOFF: Yes. So I think proposal by creditors committee is making more complicated a complicated issue, as the Court referred to it, already.

THE COURT: I will say, we take the cases in whatever posture they come in. And sometimes, it's straightforward. And sometimes, it's not. And I think there's been a very complicated factual scenario that we're walking into. It is what it is, and so we have to deal with it in the most appropriate way in terms of cause.

And the reason why I'm focusing so much on the agreement of the parties and what parties can live with is frankly, the motion doesn't answer the mail. It doesn't lay out the Sonnax factors. There's case law that says when you don't engage in an analysis on Sonnax factors, that is alone a basis for denial of a motion. It's very pro forma.

And so I mean, there is a basis to deny it, given the record. I understand you didn't get a chance to reply to the

oppositions. That's sort of a function of the odd procedural posture. We've made a complicated case even more complicated as we've gone, seeking it on an emergency basis. Then it got pushed off for another week. I understand that. And nothing about -- so my thought is what can be done today to move things forward.

And so if -- and I think, no matter where we end up, the notion of a step-by-step process, given all the complicated factors here, I think everybody agrees has some appeal. But as I said, whatever I do, I'm not going to tell the district court how it should handle things in that case.

MR. FISCHOFF: And that brings up my concern. We still have to deal with the possibility that the district court says, well, no to the motion. Then that gives rise to the debtor's need to file a notice of appeal.

THE COURT: Yeah, but I think the tweak that we just discussed -- and again, it's my fault for injecting that additional wrinkle, and that's what it is. It's a wrinkle to what was already discussed that lays out exactly --

MR. FISCHOFF: Okay. It sounded like a fold but --

THE COURT: -- the extent of how far you can go, including --

MR. FISCHOFF: Yeah.

THE COURT: -- a notice of appeal, but no further in an appeal.

MR. FISCHOFF: Right.

THE COURT: But it also says that to the -- that would probably have a separate paragraph, and that paragraph would say that as to the motion that will be filed, the district court, obviously this Court takes no opinion about how the district court wants to handle that motion and understands that the parties will make an argument to the district court that the motion should be stayed, some parties, in light of the bankruptcy but that this Court believes that that decision about whether to proceed with the motion on damages or not is a question for --

MR. FISCHOFF: Yeah. Right.

THE COURT: -- the district court to answer on the first instance.

MR. FISCHOFF: Understood.

THE COURT: I'm sure you can say that in a more articulate and nuanced way than I just said it because I could see Ms. Strickland's blood pressure rising --

MR. FISCHOFF: Yeah.

THE COURT: -- where I articulated it. And I'm just, I'm spitballing here.

MR. FISCHOFF: I'm sure she'll have a draft for me very shortly.

THE COURT: All right.

MR. BERGER: I think it's our desk.

THE COURT: I don't want -- I don't want to beat a dead horse. We'll get to wordsmithing, and we can --

MS. STRICKLAND: Your Honor --

THE COURT: -- talk about --

MR. FISCHOFF: And one other point, if I may. I just want to say, we will get the necessary update, too, so that the Court is assured, as we have been assured, that the fees will be paid by the two defense funds.

THE COURT: Yeah, that needs to happen quickly.

MR. FISCHOFF: And we'll make sure because I --

THE COURT: And I think that needs to happen before the order is entered.

MR. FISCHOFF: Right. We're going to work on that simultaneously.

THE COURT: And if there's an issue about that, then we'll have to --

MR. FISCHOFF: Figure it out.

THE COURT: -- get back together --

MR. FISCHOFF: Yeah.

THE COURT: -- and unpack the issue.

MS. STRICKLAND: Your Honor, I just want to make sure that we have our compartments straight. I'm not trying to draft on the fly.

THE COURT: Well, I just did. And I think, again, it's a dangerous thing to do. So I think I understand where

you're coming from, and I think you have a sense of what I'm trying to accomplish.

MS. STRICKLAND: I do. I'd like to --

THE COURT: So what I would suggest is rather than try to make it perfect here on the fly is I'm happy to even take a break and let people noodle around with language and come back, say, after lunch and so that we can actually get it done today. I'm also happy to have people exchange language and then provide me with the most up-to-date thing and have a conference. It may be more fruitful to do it when we actually have language than to try to do it on the fly here today.

MS. STRICKLAND: I agree, and that wasn't where I was going. I just want to -- I want to figure out the concept. Forget about the language. The concept that I hear Your Honor articulating, which is fine, is stay lifted. Motion to district court for new trial. District court order says, in some form or fashion, do what you want with this.

That happens. District court does whatever it's going to do. You are not going to micromanage. You've been crystal clear. We are fine.

They lose, assume. If they win, it doesn't -- if they lose, then what has to happen is there is an appeal right. At that point, my understanding is your order is going to say you can file a notice and no more, and then you've got to come back.

THE COURT: Correct.
MS. STRICKLAND: That's all I wanted to clarify.
THE COURT: Yep. Yep. Yep
MS. STRICKLAND: Okay. And we aren't remanding and doing --
THE COURT: No, no. It's just a notice and no further.
MS. STRICKLAND: Understood.
THE COURT: And subject to further order of the Court and --
MS. STRICKLAND: Exactly.
THE COURT: -- everybody reserving all rights and all that good stuff.
MR. FISCHOFF: And that's debtors understanding.
THE COURT: All right.
MR. BERGER: And we're good with that, Your Honor.
THE COURT: All right. We're making progress. So with that, let me hear from the United States Trustee's office.
Oh, you're on mute.
UNIDENTIFIED SPEAKER: Wait. Oh, she's talking.
MS. SCHWARTZ: I'm unmuted now, correct?
THE COURT: All right. Yes, we can hear you just fine. Thank you.
MS. SCHWARTZ: Andrea Schwartz, the United States Trustee. Judge, I had asked to kind of jump in before you got

to the merits of the motion because I knew a lot of the issues that were going to be raised as part of the motion were issues that we have already been all over and addressed. And I wanted to be able to provide the Court with some information in that regard.

So let's start with the retentions, which are not a today issue, which are not on for another week and a half, but the bottom line being that one of the missing components of the two retentions that have been filed has been the source of funding and disclosure regarding that. So I wanted to let the Court know that we had already provided comments to both the Sibley & Camara (sic) firm that is the law firm that is proposed to handle the Freeman litigation, whatever steps are permitted pursuant to the stay, the limited lift stay or modification stay, whatever you want to call it, as well as the Aidala law firm that's proposed to be retained in connection with the various disciplinary actions that are pending regarding Mr. Giuliani.

And also let the Court know that it appears, based on our conversations with those lawyers, that their expertise is not bankruptcy, so this is a new process for them, and that we understand also that there's another law firm representing or proposing to represent, purporting to represent, Mr. Giuliani in the Georgia election interference case that we have not yet received an application for. And we also haven't seen an

application yet for debtor's counsel.

So that's at least four sets of lawyers that we're been exchanging communications with debtor's counsel regarding, inquiring regarding the applications, status of funding, appropriate disclosures, affidavits, and so forth. And we wanted to give the Court and also the parties present comfort that the U.S. government is paying attention to that issue very acutely and has been requesting that information from the beginning of the case.

And also to let the Court know that it sounds like an appropriate and a good procedure to circulate an order because I think that the lawyers that are actually proposed to represent Mr. Giuliani in that DC district litigation have an opportunity to look at that order because based on the recitation today on what has to happen in that court and what the deadlines are, I'm not so certain that everything is a hundred percent accurate that was represented today. It may be --

THE COURT: Well, just two thoughts on that. One is if somebody stands up and makes a representation here, I assume it's accurate. And if it's not, then people need to get take appropriate steps immediately to straighten that out. I do, however -- I do, however, agree that they need to see the order because exactly what relief is asked for in trial court as a trial -- as the person in the trial court representing the

party, they have to be totally on board. There can't be any daylight, or we're going to end up spending our lives going back and forth and having lots of conversations here. While I'm always willing to talk to the parties, I'm aware of the litigation burn problem. We can't have this be unclear --

MS. SCHWARTZ: Right.

THE COURT: -- in a way that will cause further expense and inefficiency. So yes, so I understand that --

MS. SCHWARTZ: And that's what I meant by that, Judge.

THE COURT: -- that order will be circulated, the proposed order will be circulated, and there's time to do that because we're not going to enter the order until after we have some clarity about the source of funds.

MR. FISCHOFF: That's right.

MS. SCHWARTZ: And that's what I meant by that, Judge, not that there was any intent on my part by saying that someone was misleading the Court but rather, that in speaking with the counsel that's actually litigating that, he was unaware there was even retention --

THE COURT: Yeah. No, I got it. We're making the bed that they have to lie in. So I get it.

MS. SCHWARTZ: Okay. Good. So that's important for the Court to know.

Also, with respect to the appointment of the creditors committee, just so that the record is clear, that committee was

solicited on the filing date, that's, I think, December 21st of the top twenty creditors, and the U.S. Trustee solicited interest from those creditors and appointed that committee last week. And given the fact that counsel was just retained by that committee, the U.S. Trustee waited for counsel to be retained in order to set the date for the 341 meeting of creditors, which we are now discussing and socializing a date for that. So I just wanted the Court to be aware of that.

And thirdly, that the debtor had filed a request for an extension of time to file its schedules. And as the Court knows, that's a pretty perfunctory motion that gets filed seeking an extension, usually for an additional fifteen days, to give the debtor a total of thirty days to file his schedules of assets and statement of financial affairs. He's a little bit past that at this point, but we have been in discussions with counsel for the debtor and are advised that that is well underway. And we expect that those schedules and the statement of financial affairs will be filed not later than January 22nd. And Mr. Fischoff is in the courtroom, so he can advise the Court with respect to that but --

THE COURT: All right. Well, let's take just a quick interruption to confirm that with debtor's counsel.

MR. FISCHOFF: Yeah. We've been in touch -- I spoke to U.S. Trustee yesterday, and we talked about a lot of these issues, although we've talked about the retentions numerous

times over the past week. And those are being worked on. We need a lot of information from third parties.

But putting that aside, I was in communication with Mr. Giuliani, and we are scheduling an appointment. As I explained to U.S. Trustee, he needs to be in our office in person to execute those schedules. And so we're working on a date of 24th or 25th. Hasn't been finalized. So I would say the end of next week. I'm not sure what day the 24th or 25th is. But we hope to have those completed and executed next week.

I also spoke to her about the date for the 341 meeting. We have two dates under consideration, and we'll make one of those dates work to the convenience of the U.S. Trustee.

So we're working on all the administrative issues, and we hope to have them all in order shortly.

THE COURT: All right. Thank you.

Ms. Schwartz, anything else from your office?

MS. SCHWARTZ: Well, I think that's -- I think that's it, Your Honor. We just wanted to let you know that all of those important bankruptcy processes are all underway, and we're working diligently to ascertain that information from the debtor and make sure that the filings reflect that.

THE COURT: All right. Thank you very much.

So I think I've heard from -- well, let me ask if there's anybody else who wishes to be heard here today.

MR. SAMUELS: Your Honor, Joel Samuels of the Buchalter firm. I am speaking back to Mr. Giuliani's motion for relief from the stay but with respect to something that is not on calendar today but that did have a notice of presentment process with a deadline of today.

THE COURT: Right. So I'm glad you mentioned that. It was on my list of things to address. My rule specifically -- my chambers rules specifically make it clear that you cannot seek to lift the stay by putting something on a notice of presentment. And in fact, there was an objection that was filed. And so I assume that the parties will reach out and get a hearing date for my courtroom deputy. And what I would say is that there then should be a notice of that hearing date and also an appropriate date in that notice for any other party who might want to file an opposition, just so we have it all teed up properly.

MR. SAMUELS: That's fine, Your Honor. The only thing I want to make clear is the notice of presentment did say a status (audio interference) first. I think that's unnecessary. I think we should do as Your Honor suggested, which is get a hearing date for a motion, get an objection deadline with a briefing schedule, whatever, not dilly dally, delay, and get this thing resolved.

THE COURT: All right. Well, again, it's now got to be set for a hearing. What my view is on status conference is

anybody who spent any time in this court, I'm always happy to have status conferences if they can be helpful for a case. At the same time, it's not a substitute for people talking to each other. So I always require that people talk to each other first. And if everybody agrees a status conference will be helpful, then you call chambers and say everybody agrees the status conference would be helpful and who's a party to this issue in dispute, and then we'll get you on the calendar quickly, if that shoe fits, I guess.

MS. SCHWARTZ: Judge, I'll just note for you that there is the initial case conference scheduled for January 31st in this case.

THE COURT: Right. That is correct. And so as we do at status conferences, we'll talk about the status of the case and anything else that should be addressed in the interest of moving the case forward and efficiency. And as folks who may or may not have appeared in front of me before, I like status conferences because they give a chance for people to raise issues and in a way that sometimes we can work through without the need for filing motions or having contested matters. Sometimes, it works. Sometimes, it doesn't. But it's always worth the effort.

All right. Counsel, anything else that you wanted to raise?

MS. STRICKLAND: Your Honor, in light --

THE COURT: Well, let me just make sure I'm --

MS. STRICKLAND: Sorry.

THE COURT: That's all right. Let me just make sure everybody else on Zoom that I've heard from.

And I apologize, I don't have your name handy. It's just showing up as "Joel's iPhone", but I want to make sure counsel who's on Joel's iPhone was finished with his comments.

MR. SAMUELS: Yes. Joel Samuels. I apologize for that.

THE COURT: No, no. That's all right. I apologize for not having your name handy. No worries. Zoom hearings are not an exact science, so it's perfectly fine. But I wanted to make sure I didn't cut you off. Anything else that you wanted to mention, Counsel?

MR. SAMUELS: No. We will reach out to the moving party on that, and we'll see if we can put together a process that make senses.

THE COURT: All right. And thank you for bringing up -- it was on the list of things to address in good order, so I appreciate you mentioning that.

Anybody else who's on Zoom who wishes to be heard who has not yet chimed in on today's matters?

All right. Hearing nothing, Ms. Strickland, I think you wanted to chime in.

MS. STRICKLAND: Yes, Your Honor. Your remarks about

people saying things in a status conference to avoid pleadings triggered one other thought, which is that these cases were filed on December 21st. And on January 5th, Mr. Giuliani went on Twitter TV and repeated statements that have already been deemed actionable about Ms. Freeman and Ms. Moss on Twitter TV. If that continues, we will be before you lickety-split with a request for an injunction. So just wanted to flag that the behavior --

THE COURT: No, that's a fair --

MS. STRICKLAND: -- continues.

THE COURT: That's a fair point. And there was a -- I made a comment earlier that may have been too nuanced to sort of understand my motivation. I mentioned that there's always a concern about lifting the stay to spend time and effort and money on litigating issues that have already been litigated. That's a very clinical way, I guess, of saying that I don't expect that any motions filed in the district court will -- obviously, the district court is more than capable of policing this, but as a bankruptcy court, all the constituents here have an interest in making sure that we don't confront that problem for purposes of this case.

And so I certainly would ask debtor's bankruptcy counsel to make that clear to folks, that while the district court, again, is more than capable of policing its docket and the actions of parties in cases, the bankruptcy court and all

the interested parties here also have a vested interest. So that concern raised by Ms. Strickland is a real one. And I think everybody in any court that's involved here will take it very, very seriously. So I want to make sure that message is received.

MR. FISCHOFF: So noted, Your Honor.

THE COURT: All right. Thank you.

So as to the current motion, let me give some comments just to sort of sum up. So the debtor sought to lift the automatic stay at ECF number 25 because it wants to file a motion for a new trial or to modify the judgment in the Freeman litigation in district court and if necessary, file a notice or notices of appeal in that same case that's pending in the U.S. District Court for the District of Columbia.

The debtor contends that he satisfied the requirements for lifting the stay under Section 362(d) of the Bankruptcy Code and applicable case law, and that is stay for cause, and it is memorialized -- the standard for that is memorialized in the twelve-factor test set forth by the Second Circuit in the Sonnax Industries case, 907 F.2d 1280, 1285 (2d Cir. 1990).

The motion is opposed by the plaintiffs in that case, that is Freeman the plaintiffs. See ECF number 50, who filed an extensive opposition. It's also opposed by the official committee of unsecured creditors at ECF number 56.

We've heard extensively from the debtors, from the Freeman plaintiffs, and from the committee here today on the motion. So a couple of observations and just to recap what the court's direction will be, first, the debtor's motion is very pro forma. It's really only five pages, with the signature line on page 6.

Beyond listing the twelve Sonnax factors, it actually contains less than one page of actual analysis, and it really doesn't apply the Sonnax factors to the actual facts here. And that alone provides a basis for denial of the motion. See Barcelona Capital, LLC v. NENO Cab Corporation, 648 B.R. 578, 591 through 92, an Eastern District case from 2023.

And it's striking how minimal an effort was made on the motion, given the request was made on an emergency basis, with the debtor seeking to shorten the time normally required for a hearing on such request. And this minimal effort was also surprising, given the underlying background here, as debtor would have to know this effort, this request to lift the automatic stay to continue the Freeman litigation, would be met with great scrutiny by the Freeman plaintiffs and other creditors.

And in fact, as has come to pass, folks in fact did file vigorous opposition. The two oppositions lay out the concerns of the Freeman plaintiffs and the committee of unsecured creditors in extensive detail and among the concerns

identified that we've touched on here today include whether debtor is attempting to use inappropriately the automatic stay as both a sword and a shield, which is something that the case law makes clear is of concern. See In re: Residential Capital, LLC, 2012 WL 3249641, a bankruptcy case from August 7th, 2012.

Another issue that's been identified is the spending of more money on the Freeman litigation. Given the debtor's prior conduct in the case, the objectors are skeptical about the debtor's intentions in the Freeman litigation, given the debtor's lack of participation in the case has previously led to the entry of judgment. And I'm not going to try to characterize that. It's all memorialized in the district court's orders and decisions and statements on the record.

So in light of all that, the objectors wonder whether the only purpose now is to further delay. So the Court notes that there is case law making clear that lifting the automatic stay is inappropriate to relitigate matters already adjudicated. See In re: Ditech Holdings Corporation, 2012 Bankr. LEXIS 3220 (S.D.N.Y. Nov. 14, 2022). That, of course, is not the same, as you do have rights to seek a new trial. You have rights on appeal. But I mentioned this comment, particularly in light of the concerns raised by Ms. Strickland now, about statements that have been made and may continue to be made and the concerns that would raise.

A third concern identified by the objecting parties is

the notion of spending limited estate funds on the district court case involving Ms. Freeman, where in the objectors view that the judgment debt in the Freeman case is nondischargeable under the Bankruptcy Code. And that's always an issue or often can be an issue in bankruptcy cases where there's a judgment, but it's particularly acute here, given the record that is the debtor's agreement in a stipulation the Freeman case that the debtor's conduct was intentional, malicious, wanton, and willful. And so see Pagones v. Mason, 1999 Bankr. LEXIS 90, which notes that an intentional tort of defamation may constitute willful and malicious injury under Section 523(a)(6) of the Bankruptcy Code if the debtor knew the published statements were false.

And obviously, this all raises the related issue about the debtor's application to retain special counsel. That application, as I understand it, represents that all legal fees will be paid by outside sources, but it does not disavow a right to be paid from estate funds. That issue will bear further watching.

A fourth issue that was raised by the objectors is the debtor seeking to use the stay as a substitute for an appeal bond, with the concern once again driven by the debtor's conduct in the Freeman litigation and the argument that that changes the normal calculus. The case law is split, actually, on the issue sort of in a more generic question of whether the

stay in a bankruptcy is appropriate, where to avoid the need to post a bond in the underlying litigation. And that split is set forth in cases like In re: Holm, H-O-L-M, 75 B.R. 86 (Bankr. N.D. Cal. 1987).

Finally, the fifth sort of general argument that I see in the objections is the committee arguing that lifting the stay could create disparate treatment of one creditor over another.

So in looking at the request to the applicable Sonnax factors, it is clear there are considerable problems. I'm not going to restate these concerns using the Sonnax factors. Those are all laid out in the objectors' papers. That is, the Freeman plaintiffs and the UCC. But in the end, dealing with all these concerns today is impossible, and that's only heightened by the fact that the opposition came in about twenty-four hours ago.

So where we are is as follows. The judgment plaintiffs in both their papers and as refined here today have made it clear that they don't -- that is, the Freeman plaintiffs, excuse me, do not oppose the lifting of the stay for the debtor to file a post-trial motion dealing with damages and to file a notice of appeal if the court acts on that, but to take no further step on appeal.

And this is all relevant because this does give me a basis to grant some relief because it's agreed to -- the same

approach has been agreed to by the committee, and no other party has been heard to oppose it. This is all contingent upon verifying that no estate funds will be used in connection with the Freeman litigation and these additional steps.

It also will be the subject of some noodling of language to make it clear that the district court has the discretion to treat that any motions filed in a way that the district court deems is appropriate and that as a bankruptcy nothing about what the district court wants to do really implicate the bankruptcy concerns. And parties are free to make their arguments in district court about what they think is the appropriate way to handle it. But I, as a bankruptcy judge, am not ordering anything one way or the other to explain how I think the district court should handle that motion.

And so given that agreement, I agree that it is appropriate to lift the stay along those lines. Parties will work on a proposed order that does so. And in the meantime, the parties will work on then submitting that to the Court. If there are issues, we can have a conference to talk about it and try to work our way through it. But in the meantime, before there are submitted, there will be hopefully some progress made on the retention issues, as well as the source of the funds and the Lar Dan affidavit and all that goes with it.

And today is the first step in what may be further discussions about what should happen in the Freeman litigation.

Everybody reserves their rights. I certainly, after today's conversation, have a pretty good idea of where people stand. But we'll take this one step at a time. I know that makes it complicated, and it does necessitate that people come back to this Court, which I know is not necessarily the most efficient way to do it or the least expensive way to do it, but it seems to be the most just way to do it.

And so I -- and speaking about status conferences, I'm happy to use those as a way to chat with folks about where the Freeman litigation stands and to discuss future steps so we can avoid unnecessary litigation and contested issues here in this court. The only thing I would say is I don't want to have those conversations without all the parties who are here today present because that would set us backwards, as opposed to forward.

So if one of the parties wants to raise that issue here in a status conference and say, Judge, in light of the Freeman litigation, here's what we think should happen, and this is a new development or a new thinking on our part, you need to socialize that with all the interested parties, and then we can have a conversation. But surprise is a bad thing in litigation pretty much always, cross-examination being the notable exception. But for things like this, surprise is a bad idea, and I want to avoid surprise. So please talk to each other first.

But again, I'm happy to make myself available as needed to chat with the parties and try to find the most efficient way forward in these cases, whatever that looks like. I do appreciate that parties have laid out -- I think every party who's here today, in court, the debtor, the committee, the Freeman plaintiffs, the U.S. Trustee's office, every party that's been actively involved today has sort of laid out a road map or another about what should happen in the case going forward. And I fully anticipate seeing pleadings and further things in the future that reflect their views.

If anyone needs to chat about any of that, again, I'm happy to make myself available. But with that, that's my ruling that I think sort of memorializes our ongoing discussion here today. I do appreciate counsel's willingness to have that kind of a dialog to reach a just result and navigate the many shoals that are involved in this particular dispute.

So with that, let me circle the virtual room. See if anything else needs to be addressed here today.

Anything else from the debtor?

MR. FISCHOFF: No, Your Honor. We appreciate Your Honor's help in working this out today. Thank you very much.

THE COURT: All right. Thank you.

Anything else from the Freeman plaintiffs?

MS. STRICKLAND: No, Your Honor. We will work on the language. We assume that no order will be entered until the

retention issue is nailed down and memorialized by court order.

THE COURT: Correct.

MS. STRICKLAND: Thank you, Your Honor.

THE COURT: Correct. And so as you know, proposed orders are emailed to chambers. And in this instance, if everyone agrees upon the order, the proposed order would be emailed to make sure to copy everybody else of interest, so everybody knows it's being conveyed, with a notation that this order is agreed to, and also with some representation about the status of the funds issues so that I know it's appropriate to enter the order, meaning that people have gotten to a point where they understand estate funds won't be used and that's been confirmed, that everybody's on the same page with that. If it's helpful to get together to chat about that, we can do that. But again, I don't want to prematurely enter an order until the issues we've talked about today are run to ground.

MS. STRICKLAND: Your Honor, I was thinking that the order on this motion would be after the order on the retention, once the disclosure's been formally made, rather than relying on representation.

THE COURT: I think that's fine. I'm open to suggestion. That would seem to guarantee that there won't be any sort of miscommunication anywhere. So I'm happy to do it that way. I'll just put in the caveat that if everybody agrees that the issues are somehow already resolved but you're going

to give me both orders at the same -- whatever it is, if you all are on the same page that it's appropriate to move forward with the order, it's agreed upon, I'm happy to do that. Again, just make sure to communicate that to me in a way that is unambiguous and includes all folks who are parties-in-interest.

MR. FISCHOFF: Agreed.

THE COURT: All right.

MS. SCHWARTZ: Your Honor, just for clarification --

THE COURT: Anything else from the committee?

MS. QURESHI: Nothing more from the committee, Your Honor. Thank you.

THE COURT: All right. Anything else from the UST?

MS. SCHWARTZ: Thank you, Your Honor. Just for clarification, I think that we're talking only about the one retention. That is for the law firm that's proposed to handle the Freeman litigation. As I mentioned earlier, there are numerous retention applications that have been contemplated or filed.

THE COURT: Thank you for that clarification. I think that's right. As to other retentions, everybody reserves all rights that they have under applicable law. Again, I think it's important for debtor's counsel to socialize that so that people are in the know because those conversations will be more efficient than having court hearings and things that people are surprised, obviously, to the extent we're talking about

litigation elsewhere, to implicate some of the concerns we've been talking about today. And so I trust parties will have communications, the U.S. Trustee's office, the committee, the Freeman plaintiffs, to keep on top of what's going on and then figure out where to go from there. But thank you for the clarification, Ms. Schwartz.

All right. With that --

MS. SCHWARTZ: Thank you, Your Honor.

THE COURT: -- thank you very much. I appreciate everybody's thoughts here today and look forward to seeing you at the end of the month at the first status conference, which isn't quite the first status conference. But thank you very much.

IN UNISON: Thank you, Your Honor.

(Whereupon these proceedings were concluded at 1:02 PM)

I N D E X

C E R T I F I C A T I O N

I, River Wolfe, certify that the foregoing transcript is a true and accurate record of the proceedings.

River Wolfe (CDLT-265)
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